The Federal Report

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

The Month in Washington: September 2005

Hurricanes and the Supreme Court occupied much of Congress' time during September. As lawmakers tried to decide how many tens – or hundreds – of billions of dollars to spend on relief packages for the victims of Katrina and Rita, a House panel, largely boycotted by Democrats, began examining the much-criticized federal response to Katrina. The Senate, meanwhile, confirmed John Roberts to replace the late William Rehnquist as chief justice of the U.S. Supreme Court and waited for President Bush's announcement of a nominee to replace the retiring Sandra Day O'Connor. While the Roberts' confirmation process went smoothly – with 78 senators voting for him – things are likely to be different the next time around since O'Connor has been a swing vote in so many cases and her replacement could alter the composition of the court. As for more routine matters, the "deadline" for the completion of spending legislation came and went on Sept. 30, with Congress still not having passed most of the government's appropriations bills. Finally, the Republican leadership was shaken up late in the month when a Texas grand jury indicted House Majority Leader Tom DeLay, leading to DeLay stepping down from that post and Missouri Rep. Roy Blunt taking over. With so much to do and so many distractions, it is unlikely Congress will take on any other major projects, particularly Social Security reform, this year.

Issues and Events

Judge Reverses Age Discrimination Ruling

The Equal Employment Opportunity Commission (EEOC) can issue a rule that would allow employers to offer different levels of retiree health benefits based on Medicare eligibility, just not right now, a federal judge said on Sept. 27, reversing a ruling she issued six months earlier.

The issue goes back to 2000, when a federal appeals court ruled that a Pennsylvania county violated the Age Discrimination in Employment Act (ADEA) by providing lesser benefits to Medicare-eligible retirees than to those who were not yet 65. The ruling was consistent with the policy of the EEOC at the time but the panel later rescinded the policy and, in April 2004, adopted a new rule that would allow the level of benefits to be linked to Medicare eligibility. That rule was blocked from taking effect in March by U.S. District Judge Anita Brody in a lawsuit filed by AARP. She reversed that decision though based on a U.S. Supreme Court decision that held that judges should generally defer to the decisions of federal agencies.

The EEOC cannot move ahead with the new rule, yet, though. Brody said the agency cannot act on the issue until AARP has had a chance to appeal her ruling.

Brody's reversal has been applauded by many public employee and retiree groups and business organizations that argue that the 2000 court decision would result in employers simply dropping health benefits for all retirees. AARP, though, insists that it would be wrong for Medicare-eligible retirees to receive lesser health care benefits than their younger counterparts.

Senate Panels Produce Pension Compromise Bill

Two Senate committees have reached a bipartisan compromise on pension reform legislation.

The Pension Security and Transparency Act of 2005 would, among other things, change funding rules for private sector pension plans and increase the premiums paid to the Pension Benefit Guaranty Corporation, the governmental agency that insures private sector pensions. In addition, the legislation includes several provisions that would affect public pensions, including clarification of purchase of service credit rules; waiver of the 10 percent early withdrawal penalty for public safety workers who are at least 50 years old; and clarification of minimum distribution rules for governmental plans.

The bill, a product of negotiations by Republican and Democratic leaders of the Finance Committee and the Health, Education, Labor and Pensions Committee, could reach the Senate floor as early as the first week of October.

Senate Leaves Drug Importation Language Out of Bill

The Senate on Sept. 22 passed a Department of Agriculture spending bill that does not contain a controversial provision on prescription drug importation that the House included in its version of the legislation.

The House bill would prevent the Food and Drug Administration from enforcing legal restrictions on imported drugs, a provision that has prompted President Bush to threaten to veto the legislation. While many lawmakers support efforts to ease the ability of Americans to buy prescription drugs from Canada and other countries in which price controls keep their costs down, Bush and some GOP leaders say such a move would put people at risk of buying counterfeit or tainted medications.

The two versions of the legislation now go to a conference committee, which will be charged with producing a compromise bill.

GOP Social Security Plan Would Increase Federal Spending by $1 Trillion: CBO

The leading Republican Social Security reform bill would extend the life span of the Social Security trust fund by 11 years but would also significantly increase federal spending, according to findings released Sept. 14 by the Congressional Budget Office (CBO).

The Growing Real Ownership for Workers (GROW) Act from Rep. Jim McCrery, R-La., the chairman of the House Ways and Means Social Security Subcommittee, would push back the year in which the trust fund would be exhausted from 2052 to 2063, the CBO projected. This reduction would occur because traditional Social Security benefits would be reduced between 2012 and 2052 for those beneficiaries who choose to have the personal accounts that would be created by the plan. Overall benefits could be higher for beneficiaries than they would be under current law, though, depending on the performance of the accounts' investments.

(While the CBO forecasts that, under current law, the trust fund would be exhausted in 2052, Social Security trustees project that the fund will last only until 2042.)

Bill supporters have promoted the legislation by saying that it would use Social Security surpluses to fund personal investment accounts, a different tack than the one President Bush has favored, which involves "carving out" a portion of the Social Security tax for such accounts, although most Democrats have been no less vehement in their opposition to this approach than they have been to the president's. The surpluses are now used to purchase special Treasury bonds for the Social Security trust fund and the money received for the bonds is spent by Congress in the same manner as other revenues.

What the bill really would do, though, is increase federal spending between the year of enactment and 2021 – the year in which CBO projects that Social Security would start paying out more in benefits than it receives in revenues if the bill were to become law – by an amount that happens to be equal to Social Security surpluses during that time. So, the surpluses would continue to be spent as they are now – the report notes that they "would still be available for use for other programs and activities" – while the government's general fund would pay for personal accounts. This would increase government spending by about $1 trillion between 2007 and 2021, according to the report.

The CBO's findings may be irrelevant, though. While some Republicans leaders, including House Ways and Means Committee Chairman Bill Thomas of California, continue to insist that consideration of Social Security reform legislation has only been "slightly delayed," others in the GOP say competing issues, such as Hurricane Katrina and Hurricane Rita relief, are likely to knock Social Security off of the congressional agenda for this year.

Strategic Recommendations

LGV&A is not offering any new strategic recommendations to the Board this month.

California Congressional Delegation

Dreier Blocked for Leader's Role, But Will Get Some New Duties

California Republican Rep. David Dreier, who was briefly mentioned as a possible replacement for Tom Delay as House majority leader after the Texan was indicted by a grand jury on Sept. 28, will instead serve as an assistant to the man who won the post, Missouri's Roy Blunt.

Dreier's candidacy was reportedly blocked by conservative members of the House GOP caucus who considered him to be too moderate.

Dreier, who chairs the House Rules Committee, should gain some influence with the Republican leadership in his new role.

Related National and Industry News

State, Local Retirement System Assets Near $2.5 Trillion

State and local pension plans held just under $2.5 trillion in assets in 2004, a more than $300 billion increase over the level of a year earlier, according to statistics released in September by the U.S. Census Bureau.

Of the plans' assets, nearly $2 trillion was held in non-governmental securities, including $931 billion in domestic stocks and $421 billion in corporate bonds. The plans held $223 billion in governmental securities.

For the 2003-2004 fiscal year, the plans had $405 billion in income, which included $31 billion from employee contributions, $61 billion from government contributions and $312 billion – or 77 percent of total income – from investment earnings.

Increase in Health Coverage Premiums Slows Slightly, Study Finds

Health care insurance premiums increased at a slower rate this year than they did in 2004, but the percentage of businesses offering coverage continued to decline, according to the results of an annual survey released Sept. 14 by the Kaiser Family Foundation and Health Research and Educational Trust.

Premiums rose 9.2 percent in 2005 – two percentage points lower than the previous year's hike and the first time since 2000 that the increase did not reach double digits – bringing the average cost for family coverage to $10,880, according to the survey of nearly 3,000 public and private employers.

"Premium increases have slowed somewhat, but there's little confidence out there that we have an answer to health care cost growth," Jon Gabel, co-author of the study said. "In the mid-1990s, premium hikes dropped to less than 1 percent, and we're still far away from that right now."

The survey found that 60 percent of employers offer health coverage, a number that is down from 66 percent in 2003 and 69 percent in 2000. Health insurance premiums, the study noted, have increased 73 percent since 2000.